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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,748	02/15/2007	Robert Henri-Marcel Stouffs	19790-008US1 CER03-0015	8191
26191 7590 09/30/2009 FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER WOMACK, DOMINIQUE A	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			09/30/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/576,748	Applicant(s) STOUFFS ET AL.	
	Examiner DOMINIQUE WOMACK	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 14-23, 33-35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Beauregard et al. [US Pat No. 6,458,401].**

3. **Regarding claims 14, 20 and 33**, Beauregard discloses a process for preparing a powder containing a crystalline particles of maltitol comprising the steps of:

a. Continuously mixing maltitol syrup having a dry matter content of at least 70% by weight and a maltitol content of at least 85% by weight on a dry matter basis, the mixing being effected by simultaneously dispersing the maltitol syrup and maltitol containing seeds into an open rotating receptacle containing maltitol based granules (col. 2, lines 35-45);

b. Drying the granulated product obtained to achieve a residual moisture content of not more than 2% (col. 3, lines 47-48); and

c. Grounding the granules to the required particle size and then sorting the particles by shifting (col. 3, lines 49-51).

4. The maltitol syrup and seed material is introduced into the granulator to achieve a seed/syrup weight ratio of 4 parts seed to 1 part maltitol syrup.

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5. **Regarding claim 15**, Beauregard discloses that the particles eliminated by sifting may then advantageously recycled to the granulator for use as maltitol containing seeds (col. 3, lines 50-52).
6. **Regarding claims 16-17**, Beauregard discloses that an air atomizing nozzle is used to spray the aqueous syrup onto the rotating bed in the granulator (col. 3, lines 26-28).
7. **Regarding claims 18 and 19**, Beauregard discloses that the matured granules are submitted to a rough grinding and dried in a fluidized bed using air at about 90° C (col. 4, lines 65-67).
8. **Regarding claims 21-23**, Beauregard discloses that the temperature of maltitol syrup is 80° C (col. 3, lines 20-21).
9. **Regarding claims 34-35 and 37**, Beauregard discloses sugar free shortbread cookies containing 18% by weight maltitol (col. 5, example 2).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. **Claims 24-26 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beauregard [US Pat No. 6,458,401] in view of Serpelloni [US Pat No. 4,831,129].**

14. Beauregard is relied upon as above with respect to claims 14 and 33.

15. **Regarding claims 24-26**, Beauregard fails to disclose the maltitol content of powdered maltitol product.

16. Serpelloni relates to directly compressible powdered maltitol and its process of preparation.

17. Serpelloni discloses a process that prepares maltitol powder with a maltitol richness of 95% by weight on dry matter (col. 4, lines 13-15). Serpelloni discloses that this powder has improved compressibility properties (col. 1, lines 22-28).

18. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to purify the powdered maltitol of Beauregard in order to achieve a maltitol richness of 95%.

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One of ordinary skill in the art would be motivated to achieve a maltitol richness of 95% because this kind of powder has improved compressibility.

19. **Regarding claim 36**, Beauregard fails to disclose that maltitol powder is used in a tablet.

20. Serpelloni discloses a process in which maltitol powder with a maltitol richness of 95% by weight on dry matter is compressed into a tablet (col. 4, lines 53-68). Serpelloni discloses that the sweetening power of maltitol would open numerous applications to maltitol in the field of the pharmaceutical and food industries (col. 1, lines 10-15).

21. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the powdered maltitol of Beauregard to form a tablet comprising maltitol. One of ordinary skill in the art would be motivated to form a tablet comprising maltitol because the sweetening power of maltitol is useful in pharmaceutical applications.

22. **Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beauregard [US Pat No. 6,458,401] in view of Kawashima et al. [US Pat No. 5,583,215] and in further view of Serpelloni [US Pat No. 4,831,129].**

23. **Regarding claim 27**, Beauregard discloses a process for preparing a powder containing a crystalline particles of maltitol comprising the steps of:

- a. loading maltitol powder into a fluid bed basket (col. 3, lines 26-28);
- b. providing a gas having an inlet temperature between about 80°C and the melting temperature of the maltitol powder (col. 3, lines 16-28);

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- c. adding a maltitol syrup into a feeding basket of the fluid bed, wherein said maltitol syrup has a dry substance content of about 70% (col. 3, lines 16-28);
- d. spraying said maltitol syrup onto the maltitol powder to obtain a coated maltitol product, wherein the maltitol syrup is sprayed onto the maltitol powder through a nozzle using said gas (col. 3, lines 16-45);
- e. drying said coated maltitol product to obtain a granulated maltitol product having a moisture content of less than 1% (col. 3, lines 16-50);
- f. milling said granulated maltitol product to obtain solidified maltitol; and
- g. recycling part or all of said maltitol into step a) (col. 3, lines 16-52).

24. **Regarding claim 27**, Beauregard fails to disclose that a maltitol product having a moisture content of less than 1%.

25. Kawashima relates to a crystalline mixture solid containing maltitol and a process for preparing it.

26. Kawashima discloses a crystalline mixture solid containing maltitol having 0.5% water content and improved physical properties (col. 9, line 30-34). Kawashima also discloses that this crystalline mixture solid containing maltitol kept a good powderous state without any caking of powder during storage (col. 9, lines 41-43).

27. **Regarding claim 27**, Beauregard in view of Kawashima fails to disclose that the maltitol content of powdered maltitol product is from about 95% to 98%.

28. Serpelloni relates to directly compressible powdered maltitol and its process of preparation.

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29. Serpelloni discloses a process that prepares maltitol powder with a maltitol richness of 95% by weight on dry matter (col. 4, lines 13-15). Serpelloni discloses that this powder has improved compressibility properties (col. 1, lines 22-28). Serpelloni also discloses recycling was used in the process that obtains maltitol powder with a maltitol richness of 95% by weight on dry matter (col. 3, lines 42-53).

30. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to purify the powdered maltitol of Beauregard in view of Kawashima in order to achieve a maltitol richness of 95%. One of ordinary skill in the art would be motivated to achieve a maltitol richness of 95% because this kind of powder has improved compressibility.

31. **Regarding claim 28**, Beauregard in view of Kawashima and Serpelloni discloses that the gas was air (Beauregard: col. 3, lines 26-28).

32. **Regarding claim 29**, Beauregard in view of Kawashima and Serpelloni discloses a gas inlet temperature of 90° C (Beauregard: col. 4, lines 65-67).

33. **Regarding claim 30**, Beauregard in view of Kawashima and Serpelloni discloses a granulated maltitol product having 0.5% water content (Kawashima: col. 9, line 30-34).

34. **Regarding claims 31-32**, Beauregard in view of Kawashima and Serpelloni discloses a maltitol powder with a maltitol richness of 95% by weight on dry matter (Serpelloni: col. 3, lines 42-53).

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Conclusion

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIQUE WOMACK whose telephone number is (571) 270-7366. The examiner can normally be reached on Monday-Thursday, 9:30am-6:00pm.

36. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

37. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W./

Dominique Womack
Examiner, Art Unit 1794

17 September 2009

/JENNIFER MCNEIL/

Supervisory Patent Examiner, Art Unit 1794